

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION

TRANSPORTATION MANAGEMENT, INC.

Employer

and

CASE NO. GR-7-RC-22186

GENERAL TEAMSTERS UNION, LOCAL 406,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

APPEARANCES:

John E. Dewane, Attorney, of St. Joseph, Michigan, for the Employer.  
Fillipe Iorio, Attorney, of Grand Rapids, Michigan for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The parties submitted briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit of approximately 60 full-time and part-time drivers. The Employer contends that the smallest appropriate unit must encompass a wall-to-wall unit of all 71 non-supervisory employees at its facility, which would add dispatchers, mechanics, office assistants, and clerks. However, the Employer would exclude its administrative assistant as a confidential employee. The Petitioner took no position on the confidential status of the administrative assistant, but contends that the dispatchers are supervisors. On the basis of the entire record, I find that the drivers do not share a sufficiently distinct community of interest and the smallest appropriate unit must encompass all the employees at the Employer's facility, which includes the administrative assistant. The dispatchers and office assistant/assistant dispatcher, however, will be allowed to vote subject to challenge due to the inconclusive evidence concerning their asserted supervisory authority to effectively recommend raises based on performance evaluations.

The Employer is engaged in the transportation of elderly and handicapped individuals under contract with the Interurban Transit Partnership (ITP) in Grand Rapids, Michigan. The Employer's facility in Grand Rapids consists of a lobby area, office area and garage. Most of the vehicles operated by the Employer are Ford Club Wagons retrofitted to accommodate wheelchairs. Prescheduled routes are provided by ITP to the Employer by computer. There are 45 to 50 routes a day. Transportation services are provided Monday through Friday, 5:15 a.m. to 6:00 p.m., and Saturday, 6:00 a.m. to 9:00 p.m.

The Employer is headed by Operations Manager Ken Sonnenberg. Other management personnel include Office Manager Maggie Sonnenberg, Assistant Manager Yvonne Muelendyk, and Fleet Manager David Hiemstra. There are also two road supervisors, who directly supervise the drivers, Sally Pierce, who is designated as the a.m. supervisor, and Tom Callis, who is the p.m. supervisor.<sup>2</sup>

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<sup>2</sup> The parties stipulated, and I find, that Operations Manager Ken Sonnenberg, Office Manager Maggie Sonnenberg, Assistant Manager Yvonne Muelendyk, Fleet Manager David Hiemstra, and Road Supervisors Sally Pierce and Tom Callis, are supervisors within the meaning of Section 2(11) of the Act because they have the authority to responsibly direct employees using independent judgment and to discipline or effectively recommend discipline of employees.

Routes are assigned to drivers by the assistant manager through a bid process. Drivers must call in the night before for the next day's schedule. They are required to punch in a half hour before their first stop. The earliest punch in time is 4:45 a.m. Drivers work varying schedules; some work four-day weeks, some five-day weeks, and some work only Saturdays. Upon arrival at work, drivers report to dispatch to receive their daily route manifests. They advise the road supervisor, or in his/her absence, the dispatcher, of any potential problems with the route. Before leaving on their routes, drivers fill out a pre-trip inspection form for their vehicle. Drivers are expected to assist customers at stops, including escorting them to and from the vehicle, and must learn to operate the lifts in the vehicles. They are provided with two-way radios to enable communication with the road supervisor or dispatcher while on the route. The drivers can call the dispatcher for assistance in finding a stop or in the event of a no-show. The dispatcher then contacts ITP for permission to leave if a customer is a "no-show", a client that fails to appear at the scheduled stop. The dispatcher also advises drivers to leave if the situation meets certain criteria. In order to take a break while on the route, drivers must call the dispatcher, who decides whether to allow the break based on need of service. Breaks of more than five minutes are unpaid. Any customer complaints about drivers are handled by the road supervisors. Drivers are required to keep a log of the time of all stops and mileage on the manifests. At the end of the day, they fill out a cover sheet with the total number of passengers, fare amounts, and tickets collected. This paperwork is done in the front lobby area, which also serves as an employee break room, where several tables are set up for the drivers. The manifests and trip inspection reports are then turned in to the front desk clerk, who has a desk in the corner of the front lobby area. Drivers spend about 45 minutes to one hour at the facility out of an eight to ten hour work day.

There are two full-time and three part-time dispatchers who also report to the road supervisors. The full-time dispatchers work Monday through Friday; the a.m. dispatcher from 4:00 a.m. to noon, and the p.m. dispatcher from 11:30 a.m. to 7:30 p.m. The part-time dispatchers work Saturdays; the a.m. dispatcher from 5:00 a.m. to 1:00 p.m., and the two p.m. dispatchers on alternating Saturdays from 12:45 p.m. to the end of the day. The dispatchers oversee the dispatching of routes from ITP, provide assistance to drivers such as finding stops or adjusting a route to enable completion and relay driver problems such as running late or a difficult on-board situation to the road supervisor. The dispatchers occupy the same office as the road supervisors and the office assistant/assistant dispatcher. The office contains three desks, one for each position. The dispatchers have no authority to order drivers back to the depot unless directed to do so by a road supervisor. They have no authority to issue discipline, but are required to submit to the road supervisor a written report of any policy infractions by the drivers. Drivers are not permitted in the dispatch office after 4:30 p.m. when scheduling for the next day is done.

The office manager supervises the three clerical employees; an office assistant/assistant dispatcher, a front desk clerk, and an administrative assistant. The office assistant/assistant dispatcher works Monday through Thursday from 8:00 a.m. to 4:30 p.m. and on Fridays from 8:00 a.m. to 2:00 p.m., or as needed. She reconciles the daily driver reports with ITP records, assists dispatch by helping to answer calls from ITP, fills in at dispatch as needed, and assists with driver check out. The front desk clerk works Monday through Friday from 3:00 p.m. to 9:00 p.m. She is primarily responsible for driver check out, which involves verifying the driver records submitted at the end of the routes, and preparation of the end-of-day daily report. She also enters punch-in times on the time cards, prepares monthly vehicle ending mileage reports, maintains a pre-trip report file and fills in as office assistant, as needed. The administrative assistant works Monday, Wednesday, and Friday from 8:30 a.m. to 5:30 p.m. and on Tuesday and Thursday as needed. She maintains accounts payable and payroll records, files documents, maintains personnel files, and assists the operations manager and office manager. She also oversees driver checkout and the preparation of the daily reports and fills in for dispatch if needed. Her office is located across from the office manager and houses all the files and the facsimile machines.

There are two full-time and one part-time mechanics who report to the fleet manager. Only the fleet manager and the part-time mechanic are certified mechanics. One of the full-time mechanics punches in at 6:00 a.m., and the other at 11:30 a.m. The part-time mechanic works as needed. The mechanics work in the garage and are responsible for maintaining the vehicles. A driver might talk to a mechanic over the radio about a problem with a vehicle, but only rarely.

All the employees began employment with the Employer as drivers, except the part-time mechanic. The Employer promotes from within. The contract with ITP requires that all employees in safety sensitive positions be subject to drug and alcohol testing. The Employer considers all employees to be safety sensitive because of their potential to substitute for drivers and therefore requires drug and alcohol testing for all employees. All employees are required to have a chauffeur's license in the event that they have to fill in for a driver. All drivers are required to be on call once a month. A pager schedule for that purpose is posted two weeks in advance. The Employer also employs several fill-in drivers. Since the pager system was implemented in October 2001, the clerical employees and mechanics have driven very little. In the last year, dispatchers drove on about 10 to 15 occasions. About three or four drivers are cross-trained in other positions, but is not clear how frequently drivers assist in other positions. A driver has never filled in for a mechanic. All employees wear uniforms, but different uniforms are worn by the drivers and other employees.

Starting wage rates are negotiable and determined by the operations manager. Thereafter, employees usually receive a 90-day raise and reviews every 180 days with raises possible. Wage rates for drivers range from \$9.00 to \$13.25 an hour; office clerical

rates range from \$10.60 to \$12.25 an hour, and dispatchers earn from \$10.75 to \$12.75 an hour. The certified mechanic earns \$15.75 an hour and the other two earn \$12.00 and \$12.60 an hour. Drivers are evaluated by the road supervisors, dispatchers, and the office assistant/assistant dispatcher. Written forms are completed with numerical ratings and comments in various areas. The multiple evaluations are compiled into one evaluation by the administrative assistant who totals and averages the points on a cover sheet with all the evaluations stapled together. Raises are determined by the operations manager based on a flow chart that designates certain amounts for various numerical point ranges. Dispatchers are evaluated by the road supervisors, assistant manager, and operations manager. The office assistant/assistant dispatcher, front desk clerk, and administrative assistant are evaluated by the office manager, road supervisors, dispatchers, assistant manager, and operations manager. The mechanics are evaluated by the fleet manager. All full-time employees enjoy the same benefits.

The drivers must share a sufficiently distinct community of interest from the other employees to warrant a separate unit. The factors weighed by the Board in determining the extent of community of interest include wages, hours and benefits; supervision; qualifications, training and skills; job functions and amount of time away from the facility; degree of contact; integration of work functions; and interchange. *Home Depot*, 331 NLRB No. 168 (2000). In this case, the weight of the evidence indicates that the drivers share more similarities with, rather than differences from, the other employees.

The wage rates of all the employees, other than the one certified mechanic, fall within a similar range and they all enjoy the same benefits. All employees, except the certified mechanic, begin their employment as drivers. They are all required to possess a chauffeur's license in the event they are called upon to drive and are all subject to drug and alcohol testing. The drivers and dispatchers are supervised by the road supervisors, the mechanics by the fleet manager and the administrative assistant, office assistant/assistant dispatcher, and front desk clerk by the office manager; but all raises are determined by the operations manager. Although the drivers spend the majority of their time away from the facility, they have daily contact with the dispatchers at the facility when they pick up their manifests and regular contact by radio while driving their routes. They also have daily contact with the front desk clerk when turning in their paperwork. At the end of the day, the drivers return their vehicles to the garage where the mechanics work. All employees are available to fill in for drivers when necessary and in the past year, dispatchers have driven on 10 to 15 occasions. The job functions of all the employees are interrelated. The drivers are required to maintain paperwork which is checked and reconciled with ITP paperwork by the front desk clerk and office assistant. The dispatchers work with the drivers to insure efficient passenger service and the mechanics provide vehicles in working order.

As to the asserted supervisory status of the dispatchers, Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

An individual need possess only one of the enumerated indicia of authority in order to be encompassed by the definition, as long as the exercise of such authority is carried out in the interest of the employer, and requires the exercise of independent judgment. **Big Rivers Electric Corp.**, 266 NLRB 380, 382 (1983). The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees commonly referred to as “straw bosses” or leaders, who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management from those supervisors truly vested with genuine management prerogatives. **George C. Foss Co.**, 270 NLRB 232, 234 (1984). The exercise of some supervisory authority in a merely clerical, perfunctory, or sporadic manner does not require a finding that an employee is a supervisor within the meaning of the Act. **Somerset Welding & Steel**, 291 NLRB 913 (1988). The burden of proving Section 2(11) supervisory status rests with the party asserting it. **NLRB v. Kentucky River Community Care**, 532 U.S. 706 (2001).

The dispatchers have no authority to hire, transfer, suspend, lay off, recall, promote, or discharge drivers or other employees. Routes are pre-determined by ITP and are assigned by the assistant manager. Dispatchers may assist drivers in locating a stop or adjusting their routes to assure completion, but this type of assistance to drivers is routine in nature. **St. Petersburg Limousine Service**, 223 NLRB 209 (1976). The drivers contact the dispatcher for permission to leave if a passenger is a no show, but the dispatcher either calls ITP for permission or gives the driver permission to leave if the situation meets certain criteria. This does not involve the exercise of any independent judgment. Although dispatchers allow drivers to take breaks on request if the work load allows, there is no indication that this task is more than routine in nature or involves the use of independent judgment. **Washington Nursing Home**, 321 NLRB 366 (1996). The dispatchers are expected to report any policy infractions by the drivers to the road supervisors, but the mere reporting of misconduct or incidents of unacceptable work performance does not confer supervisory status. **Ten Broeck Commons**, 320 NLRB 806, 812 (1996).

Dispatchers, as well as road supervisors and the office assistant/assistant dispatcher, fill out performance evaluation forms for the drivers. The numerical ratings of all the evaluators are averaged. The operations manager determines the amount of any raises. The authority to do evaluations that constitute effective recommendations for wage increases is one indicium of supervisory status. *El-Tech Research Corp.*, 300 NLRB 522 (1990). Supervisory status is established when an individual independently performs evaluations that lead directly to personnel actions such as merit raises, but not when the evaluations do not, by themselves, affect the job status of the employees. *Ten Broeck Commons*, 320 NLRB 806, 813; *Bayou Manor Health Center*, 311 NLRB 955 (1999). The record evidence with respect to the use of the average numerical performance ratings in determining raises is inconclusive and does not allow a determination as to the degree of correlation between the evaluations and the amount of merit increases awarded by the operations manager. Therefore, the dispatchers will be allowed to vote in the election subject to challenge. Since the office assistant/assistant dispatcher engages in the same evaluation of the drivers, she will also be allowed to vote in the election subject to challenge.

The exclusion for confidential employees is limited to employees who have a confidential relationship to officials charged with the responsibility of formulating, determining, and effectuating labor relations policies. *Fairfax Family Fund, Inc.*, 195 NLRB 306 (1972). It is not sufficient for the individual to be a secretary or assistant to an official responsible for labor relations. The assistance provided must be in the field of labor relations. *Pilgrim Life Insurance*, 249 NLRB 1228 (1980). Employees who deal with confidential information not related to labor relations are not confidential. *Kleinberg & Kaplan, P.C.*, 253 NLRB 450 (1980). Moreover, access to personnel files does not confer confidential status. *Lincoln Park Nursing Home*, 318 NLRB 1160 (1995); *Gourmet Foods*, 270 NLRB 578, 603 (1984). While the administrative assistant provides assistance to the operations manager and the office manager, there is no evidence that such assistance is provided in connection with any labor relations matters. Her access to personnel files and performance evaluations does not place her in a confidential position. While the administrative assistant has less contact with the drivers than the front desk clerk, to exclude her from a wall-to-wall unit would essentially deny her any representation. Therefore, I find it appropriate to include the administrative assistant in the unit.

6. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:<sup>3</sup>

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<sup>3</sup> As the Petition has indicated a willingness to proceed to an election in any unit found appropriate herein, I have administratively determined that the Petitioner has a sufficient showing of interest in the broader unit set forth below.

All full-time and regular part-time employees including drivers, dispatchers, mechanics, administrative assistant, office assistant/assistant dispatcher, and front desk clerk employed by the Employer at its facility located at 365 Lane Street, S.W., Grand Rapids, Michigan; but excluding all guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the Direction of Election, attached hereto.

Dated at Detroit, Michigan this 5th day of April, 2002.

(SEAL)

/s/ William C. Schaub, Jr.  
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